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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,777	12/06/2000	Haruaki Eto	396.39350X00	7717

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EXAMINER

AHMED, SHEEBA

ART UNIT PAPER NUMBER

1773

10

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A-210

**Advisory Action**

Applicati n No.

09/729,777

Applicant(s)

ETO ET AL.

Examin r

Sheeba Ahmed

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--The MAILING DATE of this communicati n appears n the c ver sheet with the correspondence address --

THE REPLY FILED 06 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 06 August 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☒ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 9-22.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

1. The Amendment After Final submitted on August 6, 2003 (Paper No. 9) has not been entered in the above-identified application because ***the newly proposed amendments*** to independent claim 9 which recite that the oxygen-absorbing composition is packaged in an air-permeable packaging material "using a three-sided automatic filling-packaging machine of rotary filling type in a high productivity of at least several hundred packages a minute" raises the issue of new matter, raises new issues which would require further search and consideration and further more this amendment are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

The Applicants failed to point to any support for the limitation "in a high productivity of at least several hundred packages a minute" in the original disclosure and the Examiner was unable to locate any such support. Page 6, lines 10-16 state that "the important feature of the present invention resides in the use of the granular powder, ..... when the oxygen-absorbing composition is packaged in an air-permeable packaging material using an automatic filing-packaging machine". However, the Examiner cannot find any support for "in a high productivity of at least several hundred packages a minute".

Applicants note that the Office Action mailed on March 6, 2003 does not set forth a basis for rejection for claim 9 in the detailed portion of the Office Action and hence the Applicants request that a non-final Office Action be issued stating the basis of rejection of claim 9. The Examiner regrets any inconvenience to the Applicants due to the typographical error in the detailed portion of the Office Action however the Examiner

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takes the position that the PTO-326 clearly states that claim 9 is a rejected claim and the Detailed portion of the Office Action specifically discusses all the limitations of claim 9. Specifically, the limitations of claim 9 are discussed in the rejection under 35 U.S.C. 103(a) as being unpatentable over Mckeady (WO 95/13135) in view of Otsuka et al. (US 4,579,223) which specifically sets forth that Mckeady discloses an oxygen-absorbing composition contained in an envelope of spun-bonded polyolefin wherein the composition comprises a 100 to 325 mesh particulate annealed electrolytically reduced iron in an amount up to 63% by weight (See Abstract). The envelope is a spun-bonded polyolefin known by the trade name TYVEK and inherently meets the limitation that the package is air-permeable packaging material (*given that spun-bonded polyolefin known by the trade name TYVEK is gas permeable*) (See Page 4, lines 28-30). The electrolyte to activate the iron is present in an amount between about 1 and 2% (Page 5, lines 28-35). Example 4 shows that the composition may comprise 0.34 grams of 100 mesh electrolytically reduced iron and no other iron particles (*thus meeting the limitation that the amount of iron passable through a 200-mesh sieve is less than 5% by weight*). Mckeady (WO 95/13135), as discussed above, do not state that the oxygen absorbent package is manufactured using a three-sided automatic filling machine. However, Otsuka et al. disclose an oxygen absorbent package comprising a gas permeable outer material layer and iron powder as the oxygen absorbent (Column 1, lines 1-15 and Column 2, lines 44-47) wherein the packet is manufactured according to a three side-sealing method which increases the water resistance of the packet and reduces the tendency of the inner and outer material layers to peel or separate (Column 5, lines 30-

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55). A three-side sealing automatic filling and packing machine or other means may be used to do this (Column 7, lines 3-6). Accordingly, it would have been obvious to use a three-side sealing automatic filling and packing machine given that Otsuka et al. teach that doing so increases the water resistance of the packet and reduces the tendency of the inner and outer material layers to peel or separate. **Hence, the Examiner maintains that the Office Action mailed on March 6, 2003 clearly sets forth the basis for rejection for claim 9 in the detailed portion of the Office Action.**

Applicant's arguments with respect to claims 9-22 have been considered but are moot given that **the newly proposed amendments** to independent claim 9 which recite that the oxygen-absorbing composition is packaged in an air-permeable packaging material "using a three-sided automatic filling-packaging machine of rotary filling type in a high productivity of at least several hundred packages a minute" have not been entered. However, Examiner will address the Applicants arguments as they apply to the finally rejected claims presented in the Amendment of December 18, 2002 (Paper No. 6). Applicants traverse the rejection under 35 U.S.C. 103(a) as being unpatentable over McKeady (WO 95/13135) in view of Otsuka et al. (US 4,579,223) and Cerbo (US 3,969,224) and submit that McKeady teaches away from removing fine iron powder passing through a 200-mesh standard sieve given that McKeady discloses the use of iron to about 325-mesh. However, the Examiner takes the position that McKeady **does not teach away** from removing fine iron powder passing through a 200-mesh standard sieve. First, the proposed modification or combination does not change the principle of operation of McKeady's invention and therefore the teachings of McKeady, Otsuka et al.

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and Cerbo are sufficient to render the claims *prima facie* obvious. Second, McKeady falls far short of the kind of teaching that would discourage one of skill in the art from removing fine iron powder passing through a 200-mesh standard sieve as disclosed by Cerbo given that Cerbo specifically discloses a method of separating different size particles wherein the method is thoroughly reliable in operation (Column 1, lines 61-68). The method utilizes a receptacle at a speed that centrifugally projects the particles therefrom and the particles are projected over different distances proportional to their masses (Column 2, lines 3-9) and the particles range in size from 80 mesh to 325 mesh (Column 3, lines 2-6).

Applicants further argue that the teachings of Cerbo are non-analogous to the teaching of McKeady and Otsuka et al. In response to applicant's such argument, the Examiner would like to point out that it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Cerbo specifically discloses a method of separating different size particles wherein the method is thoroughly reliable in operation (Column 1, lines 61-68). The method utilizes a receptacle at a speed that centrifugally projects the particles therefrom and the particles are projected over different distances proportional to their masses (Column 2, lines 3-9) and the particles range in size from 80 mesh to 325 mesh (Column 3, lines 2-6).

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (703)305-0594. The examiner can normally be reached on Mondays and Thursdays from 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau can be reached on (703)308-2367. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)306-5665.



Sheeba Ahmed  
September 2, 2003



Paul Thibodeau  
Supervisory Patent Examiner  
Technology Center 1700